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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 KINGPUN CHENG,

11 Plaintiff,

12 vs.

13 LINCOLN TEXTILE PRODUCTS CO., INC dba
14 KENSINGTON HOME FASHIONS, INC., and
15 DOES 1-25.

16 Defendants.

Case No.

UNLIMITED JURISDICTION

STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO LINCOLN
TEXTILE PRODUCTS CO., INC.

Complaint Filed: August 23, 2019

18 1. Introduction

19 1.1 Parties

20 This Consent Judgment is hereby entered into by and between Kingpun Cheng, as an
21 individual and acting in the interest of the public, (hereinafter "Cheng") and Lincoln Textile
22 Products Co., Inc. dba Kensington Home Fashions, Inc. (hereinafter "Lincoln"). Lincoln and
23 Cheng shall be collectively referred to as the "Parties" and each of them as a "Party." Cheng is
24 an individual residing in California who seeks to promote awareness of exposures to toxic
25 chemicals and improve human health by reducing or eliminating hazardous substances contained
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1 in consumer products. Lincoln employs ten or more persons as required for purposes of Cal.
2 Health & Safety Code §§ 25249.5 *et seq.* ("Proposition 65").

3
4 **1.2 General Allegations**

5 Cheng alleges that Lincoln offered for sale and sold in the State of California plastic bags
6 enclosing consumer products, including but not limited to Willow One Pinch Pleat Black Tab
7 Panel UPC751612036542 and Door Panel Crushed Voile UPC751612042628, containing DEHP,
8 a chemical listed under Proposition 65 as a chemical known to the State of California to cause
9 cancer, birth defects, and/or other reproductive harm, and that Lincoln did so without providing a
10 warning required by California Proposition 65. Plastic bags enclosing consumer products
11 distributed by Lincoln, including but not limited to Willow One Pinch Pleat Black Tab Panel
12 UPC751612036542 and Door Panel Crushed Voile UPC75161204262, that were manufactured,
13 distributed, or sold before the Effective Date are referred to herein as "Covered Products".
14

15 **1.3 Notice of Violation**

16 On or about August 23, 2018, Cheng issued a 60 Day Notice of Violation to Lincoln
17 Textile Products Co., Inc., Kensington Home Fashions, Bed Bath & Beyond Inc. and various
18 public enforcement agencies pursuant to Health & Safety Code §25249.7(d) alleging that Lincoln
19 was in violation of Proposition 65 for failing to warn California consumers that the Covered
20 Products exposed them to DEHP (hereinafter "Notice"). No public enforcer diligently
21 prosecuted the claims threatened in the Notice within sixty days plus service time after service of
22 the Notice to them by Cheng.
23

24 **1.4 Complaint**

25 On or about August ____, 2019 Cheng filed a Complaint against Lincoln for civil
26 penalties and injunctive relief ("Complaint") in San Diego Superior Court, Case No. 37-2019-
27 _____. The Complaint alleges, among other things, that Lincoln violated
28

1 Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP from the
2 Covered Products.

3 **1.5 Consent to Jurisdiction**

4 For purposes of this Consent Judgment, the Parties consent that this Court has jurisdiction
5 over the allegations of violations contained in the Complaint and personal jurisdiction over the
6 named Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
7 San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
8 and resolution of the allegations contained in the Notices, Complaint, and of all claims which
9 were or could have been raised by any person or entity based in whole or in part, directly or
10 indirectly, on the prior conduct of the Parties or on the facts alleged in the Complaint or arising
11 therefrom or related thereto.
12

13 **1.6 No Admission**

14 Nothing in this Consent Judgment shall be construed as an admission by Lincoln of any
15 fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
16 Consent Judgment constitute or be construed as an admission by Lincoln of any fact, finding,
17 conclusion of law, issue of law, or violation of law. However, this section shall not diminish or
18 otherwise affect the obligations, responsibilities and duties under this Consent Judgment.
19

20 **1.7** For purposes of this Consent Judgment, the term "Effective Date" shall mean the
21 date on which notice of entry of this Consent Judgment is approved by the Court.
22

23 **2. Injunctive Relief**

24 Lincoln shall not manufacture, distribute, sell or offer for sale in California any Covered
25 Products on and after the date that is 180 days after the Effective Date except for Reformulated
26 Products, as that term is defined in Section 2.1 below.

27 **2.1 Reformulation**

1 The Covered Products shall be deemed to comply with Proposition 65 with regard to
2 DEHP, and be exempt from any Proposition 65 warning requirements for DEHP, if the Covered
3 Products have a DEHP content by weight of not more than 0.10% (1,000 ppm). Lincoln may
4 comply with the above requirements by relying on information obtained from its suppliers
5 regarding the content of the materials from which the Covered Products are made, provided such
6 reliance is in good faith. Obtaining test results showing that the DEHP content is no more than
7 0.10% (1,000 ppm), using a method of sufficient sensitivity to establish a limit of quantification
8 (as distinguished from detection) of less than 1,000 ppm, shall be deemed to establish good faith
9 reliance. For purposes of this Consent Judgment, Covered Products in compliance with this
10 standard are "Reformulated Products".
11

12 2.2 Warning Alternative

13
14 As an alternative to reformulating the Covered Products, commencing on the Effective
15 Date, Covered Products, produced after the Effective Date, that Lincoln ships for sale, sells or
16 offers for sale in California that are not Reformulated Products as set forth in Section 2.1 above
17 shall be accompanied by a clear and reasonable warning as described in Section 2.3 below.

18 2.3 Clear and Reasonable Warnings

19 Where required under Section 2.2 above, Lincoln shall provide Proposition 65 warnings
20 substantially as follows:
21

22 (a)

23 Δ **WARNING:** This product's packaging can expose you to chemicals
24 including DI(2-ETHYLHEXYL) PHTHALATE (DEHP) which is known to
25 the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

26 OR

27 (b)

28 Δ **WARNING:** Cancer or Reproductive Harm – www.P65Warnings.ca.gov.

1 (c) If the regulations governing Proposition 65 warnings are amended in
2 the future, Lincoln may provide warnings in accordance with the then-applicable
3 regulations.
4

5 2.3.1 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
6 Lincoln shall provide the warning language set forth in Section 2.3 either on the package of the
7 Covered Products or affixed to the Covered Products. Such warning shall be prominently affixed
8 to or printed on each Product's label or package or the Product itself. If printed on the label, the
9 warning shall be contained in the same section that states other safety warnings, if any,
10 concerning the use of the Product.
11

12 2.3.2 The requirements for warnings, set forth in Section 2.3 above are imposed
13 pursuant to the terms of this Consent Judgment. The Parties recognize that these are not the
14 exclusive methods of providing a warning under Proposition 65 and its implementing regulations
15 and that they may or may not be appropriate in other circumstances.
16

17 3. Payments

18 3.1 Payments by Lincoln

19 Within five (5) calendar days of the Effective Date, Lincoln shall pay the total sum or
20 \$22,250 as a settlement payment as further set forth in this Section.

21 3.2 Allocation of Payments

22 The total settlement amount shall be paid in three (3) separate checks in the amounts
23 specified below and delivered as set forth below.

24 3.2.1 With regard to all claims that have been raised or which could be raised with
25 respect to failure to warn pursuant to Proposition 65 with regard to DEHP in the Covered
26 Products, Lincoln shall pay a civil penalty of \$1,250.00 pursuant to Health and Safety Code
27 section 25249.7(b), to be apportioned in accordance with California Health & Safety Code §
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1 25192, with 75% of these funds remitted to the State of California's Office of Environmental
2 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Cheng,
3 as provided by California Health & Safety Code § 25249.12(c)(1) and (d) and the instructions
4 directly below.

5
6 **3.2.2 Payment Procedures**

7 Lincoln shall issue two separate checks for the penalty payment: (a) one check made
8 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
9 the total penalty (i.e., \$937.50); and (b) one check in an amount representing 25% of the total
10 penalty (i.e., \$312.50) made payable directly to Cheng. Lincoln shall mail these payments within
11 ten (10) calendar days after the Effective Date at which time such payments shall be mailed to the
12 following addresses respectively:

13
14 Attn: Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010, MS #19B
18 Sacramento, CA 95812-4010

19 and

20 Mr. Kingpun Cheng
21 C/O Sy and Smith, PC
22 11622 El Camino Real, Suite 100
23 San Diego, CA 92130

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25 **4. Reimbursement of Fees and Costs**

26 The Parties reached an accord on the compensation due to Cheng and his counsel under
27 the private attorney general doctrine and principles of contract law. Under these legal principles,
28 Lincoln shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating,
bringing this matter to Lincoln's attention, and negotiating a settlement. Lincoln shall pay
Cheng's counsel \$21,000.00 for all attorneys' fees, expert and investigation fees, and related costs
associated with this matter, the Notices and associated fees and costs Lincoln shall wire said

monies or send a check payable to "Sy and Smith, PC" within five (5) calendar days of the Effective Date. Sy and Smith, PC will provide Lincoln with wire instruction and tax identification information on or before the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. **Release of all Claims**

5.1 **Release of Lincoln and Downstream Customers, Retailers and Entities**

Cheng, acting on behalf of himself and in the public interest, hereby waives and releases Lincoln and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, sister and parent entities, successors, and assigns, and each entity to whom it directly or indirectly distributed or distributes or sold or sells the Covered Products including, but not limited to, their downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to Bed Bath & Beyond Inc., their parent and all affiliates and subsidiaries thereof) their respective employees, agents and assigns, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, (collectively "Releasees") from all claims for violations of Proposition 65 or any other statutory or common law claims that were or could have been asserted up through the Effective Date, and consistent with the provisions of Section 2.4, above, based on exposure to DEHP from the Covered Products as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Covered Products.

In addition to the foregoing, Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity, hereby waives and releases all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims, cause of action, obligation, costs, expenses,

1 attorneys' fees, damages, losses, liabilities, and demands that he could make against Lincoln or
2 the other Releasees with respect to violations of Proposition 65 or any other statutory or common
3 law claims that were or could have been asserted based upon the Covered Products. The Parties
4 acknowledge that the claims released above may include unknown claims, and with respect to the
5 foregoing waivers and releases in this paragraph, Cheng hereby specifically waives any and all
6 rights and benefits which he now has, or in the future may have, conferred by virtue of the
7 provisions of Section 1542 of the California Civil Code, which provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
11 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY
12 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

13 Cheng acknowledges and understands the significance and consequences of this specific
14 waiver of California Civil Code section 1542.

15
16 **5.2 Lincoln Release of Cheng**

17 Lincoln hereby waives and releases any and all claims against Cheng, his attorneys and
18 other representatives, for any and all actions taken or statements made by Cheng and his attorneys
19 and other representatives in the course of investigating claims or otherwise seeking enforcement
20 of Proposition 65 against it in this matter.

21
22 **6. Non-Disparagement**

23 The Parties agree to refrain from taking action or making any public statements (written,
24 oral or via social media) which materially disparage or defame the goodwill or reputation of the
25 other Party. Notwithstanding the foregoing, nothing in this Section prohibits any person from
26 making truthful statements when required by order of a court or other governmental or regulatory
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body having jurisdiction or to enforce any legal right including, without limitation, the terms of this Consent Judgment.

7. Severability and Merger

If, subsequent to the execution of this Consent Judgment, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

8. Governing Law

The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Lincoln shall have no further obligations pursuant to this Consent Judgment with respect to the Covered Products to the extent the Covered Products are so affected.

9. Notices

9.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

Lincoln:

Emily G. Haldeman
BARG COFFIN LEWIS & TRAPP, LLP
600 Montgomery Street, Suite 525
San Francisco, CA 94111

1 EHaldeman@bargcoffin.com

2 and

3 Lincoln Textile Products Co., Inc. dba Kensington Home Fashions, Inc.
4 Attn: Timothy Mitch
5 6763 Chrisphalt Dr.
6 Bath, PA 18014

6 and

7 For Cheng:

8 Parker A. Smith
9 Sy and Smith, PC
10 11622 El Camino Real, Suite 100
11 San Diego, CA 92130
12 parker@sysmithlaw.com

12 Any Party, from time to time, may specify in writing by the means set forth above to the
13 other Party a change of address to which all notices and other communications shall be sent.

14 **10. Counterparts; Facsimile Signatures**

15 10.1 This Consent Judgment may be executed in counterparts and by facsimile or
16 exchange by electronic means, each of which shall be deemed an original, and all of which, when
17 taken together, shall constitute one and the same document.

18 **11. Modification**

19 This Consent Judgment may be modified only by further written agreement of the Parties
20 with court approval or by noticed motion.

21 **12. Attorney Fees**

22 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

24 **13. Authorization**

25 The undersigned are authorized to execute this Consent Judgment on behalf of their
26 respective Parties and have read, understood and agree to all of the terms and conditions of this
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1 document and certifies that he or she is fully authorized by the Party he or she represents to
2 execute the Consent Judgment on behalf of the Party and legally bind that Party.

3 **IT IS SO STIPULATED:**

4 Dated: 2019-8-31

Dated: 8-14-2019

5 By: Kingpun Cheng

6 By: [Signature]

7 Kingpun Cheng

8 On Behalf of: Lincoln Textile Products Co.,
Inc., dba Kensington Home Fashions, Inc.

9 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

10 Dated: _____

11 _____
12 Judge of the Superior Court
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